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**FILED**

October 10, 2007

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

By: Kevin R. Jespersen  
Deputy Attorney General  
(973) 648-7454

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF MEDICAL EXAMINERS  
OAL Docket No. BDS 08303-2006S

IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE LICENSE OF :

HAROLD J. BROWN, M.D. :  
LICENSE NO. 25MA04279200 :

TO PRACTICE MEDICINE AND :  
SURGERY IN THE STATE OF NEW :  
JERSEY :

Administrative Action

**FINAL CONSENT ORDER**

This matter was opened to the State Board of Medical Examiners (the "Board") upon the filing of Administrative Complaint by the Attorney General of New Jersey against the Respondent Harold J. Brown, M.D. The Attorney General subsequently filed an Amended Complaint in this matter.

**CERTIFIED TRUE COPY**



The Complaint alleged that the Respondent Brown permitted Robert Lane, L.P.N., Esse Lane and Derrick Lane to provide health care services to patients in the Respondent Brown's office, including physical therapy modalities within the meaning of N.J.A.C. 13:35-6.14 and N.J.S.A. 45:9-37.13. The Complaint alleged that none of the Lanes were qualified, either by license or by training, to provide the physical therapy modalities that the Lanes administered to patients in the Respondent Brown's office. The Complaint alleged that the Respondent Brown failed to adequately supervise the Lanes. The Complaint alleged that the Respondent Brown permitted the Lanes to submit bills to insurance carriers under the Respondent Brown's name and tax identification number for the services that the Lanes provided.

The Respondent Brown, through his counsel Daniel G. Giaquinto, Esq., filed Answers to both the original Complaint and the Amended Complaint, and such Answers denied the substantive allegations of the Complaint and the Amended Complaint, and asserted affirmative defenses.

The matter was transferred to the Office of Administrative Law as a contested case and assigned for hearing to Administrative Law Judge Patricia M. Kerins. The hearing in this case was scheduled to commence on October 1, 2007.

The Respondent Brown consents and agrees to each and every term of this Final Consent Order. The Board has determined that



the within disposition is adequate to protect the public health, safety and welfare. The Board has accepted the representation of Respondent Brown that he has ceased providing massage or physical therapy modalities in his practice in 2000, and has not since that time offered or provided massage therapy or physical therapy as part of his practice. The Board has further determined that the Respondent Brown is currently providing services, on a voluntary basis and without pay, to the Health Ministry of the First Baptist Church of Pennington, and that a replacement for the Respondent Brown for this voluntary, community service, that addresses the needs of the underserved and disadvantaged, cannot readily be obtained. The Board has determined that the immediate suspension of the Respondent Brown's license would unnecessarily disrupt the provision of such services and that a reasonable postponement in the imposition of a suspension is in the best interest of the public health, safety and welfare. For such reasons and other good cause shown,

IT IS on this 10 day of October, 2007,

ORDERED:

1. The Respondent Harold J. Brown, M.D. admits that he improperly delegated the administration of physical therapy to a licensed practical nurse and to two unlicensed assistants. The Respondent Brown further admits that he was aware the Lanes billed



for these services under the Respondent Brown's name and tax identification number.

2. The Board and the Respondent Harold J. Brown, M.D. agree that the above-described conduct constitutes violations of N.J.S.A. 45:1-21 (d), (e), and (n), and N.J.A.C. 13:35-6.14.

3. The license of the Respondent Harold J. Brown, M.D. to practice medicine and surgery in the State of New Jersey shall be suspended for a period of two (2) years, the first six (6) months of such suspension to be active, and the balance of the suspension to be stayed and served as a period of probation. Such suspension shall commence as of April 1, 2008. During the period of stayed suspension, the Respondent Brown may provide medical services without restriction as a plenary licensed physician and may bill and be paid for such services without restriction.

4. The Respondent Harold J. Brown, M.D. shall pay a civil penalty of \$10,000.00.

5. The Respondent Harold J. Brown, M.D. shall pay in full the Board's costs in this matter, including but not limited to, costs of investigation, expert witness fees and costs, attorney's fees and costs, and transcript costs, as allowed by N.J.S.A. 45:1-25(d), such costs being fixed at \$30,395.00.

6. The amounts required under the terms of this Final Consent Order, together with interest at the rate fixed for interest on judgment under the Rules of the Superior Court of New



Jersey, shall be paid in six (6) consecutive and equal monthly payments, the first such payment commencing on November 1, 2007. The Board, in its sole discretion, may file a Certificate of Debt for the amounts due under this Order, and the Certificate shall be discharged upon payment in full of all amounts required under this Order. Payments shall be made by certified check or money order payable to "State Board of Medical Examiners" and delivered to the Executive Director of the Board.

7. Within nine (9) months of the entry of this Final Consent Order, the Respondent Harold J. Brown, M.D. shall successfully complete a course in ethics, a course in medical record keeping, and a course in medical billing, each such course to be approved in advance by the Director of Medical Education of the Board. For purposes of this Final Consent Order, "successful completion" shall mean that the Respondent Harold J. Brown, M.D. attended all required sessions of the course, completed all required assignments of the course, and obtained an unconditional pass in each such course.

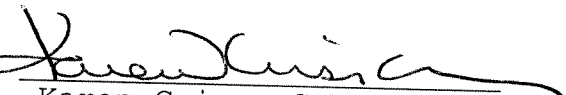
8. The Respondent Harold J. Brown, M.D. shall continue to cease and desist from providing, or offering to provide, in his practice, massage therapy or physical therapy to any person, regardless if such services are provided, or offered to be provided, by the Respondent Harold J. Brown, M.D., or some other person.



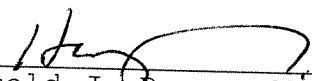
9. The Respondent Harold J. Brown, M.D. shall fully comply with the Directives for Disciplined Licensees, a copy of which is attached as Exhibit A and is made a part of this Order.

10. This Order shall be a full, complete and final resolution of the matter now pending before the Office of Administrative Law entitled In re Harold J. Brown, M.D. (Docket No. BDS 08303-2006S), and the parties hereby consent to the Office of Administrative Law closing the matter and returning the matter to the Board. The Board shall retain jurisdiction to enforce the terms of this Order.

STATE BOARD OF MEDICAL EXAMINERS

By:   
Karen Criss, C.N.M.  
Vice-President

I have read the within Order. I understand the Order and I agree to be bound by its terms and conditions. I hereby consent to the entry of this Order.

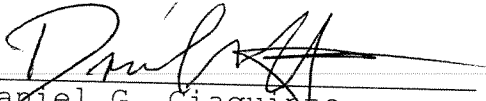
  
\_\_\_\_\_  
Harold J. Brown, M.D.

Date: 10/1/07



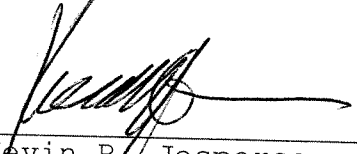
We hereby consent to the form and entry  
of this Order.

Kern, Augustine, Conroy & Schoppmann, P.C.  
Attorneys for Harold J. Brown, M.D.

By:   
Daniel G. Giaquinto

Date: 10/1/07

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Kevin R. Jespersen  
Deputy Attorney General

Date: 10/1/07



**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

**APPROVED BY THE BOARD ON MAY 10, 2000**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)



A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her



medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

#### 5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.



## ADDENDUM TO THE DIRECTIVES

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number<sup>1</sup>: \_\_\_\_\_

List the name and address of any and all Health Care Facilities with which you are affiliated:

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List the names and addresses of any and all Health Maintenance Organizations with which you are affiliated:

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Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

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<sup>1</sup> Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.



**NOTICE OF REPORTING PRACTICES OF BOARD  
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.